IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Appeal from Order No. 149 of 2005

Date of decision: 21st September, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 149 of 2005

Smt. Heera Devi w/o Late Shri Lalo Ram
R/o Village Sethi Bhandar Patti Malli,
Sethi Bhandar, Tehsil Betalghat,
District Nainital …….. Appellant

Versus

1. Shri C.S. Manral s/o Shri Ganga Singh Manral
   R/o Village Bhagwanbanger
   P.O. Ramnagar, Distt. Nainital.
2. The Oriental Insurance Co. Ltd.
   through its Divisional Manager,
   Divisional Office, Bhotia Parao,
   Haldwani, Distt. Nainital …… Respondents

Sri P.C. Bisht, Advocate for the appellant.
None for respondent no. 1.
Sri Deepak Rawat, Advocate for respondent no.2

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

RAJEEV GUPTA, C.J. (Oral)

This is claimant's appeal u/s 173 of the Motor Vehicles Act for enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Nainital vide Award dated 04.01.2005 passed in Motor Accident Claim Case No. 216 of 2004.

2. The claimant Smt. Heera Devi, the unfortunate mother of deceased Kailash Chandra, claimed compensation of Rs. 6,00,000/- for his death in the motor accident on 22.08.2004 when he was dashed by the offending vehicle bus bearing registration No. UA04/4482 resulting in his instantaneous death on the spot itself. The claimant pleaded that deceased Kailash Chandra used to earn Rs. 4,500/- per month as tailor and she was wholly dependent for her survival on his income.

3. The owner and insurer of the offending vehicle bus contested the claim and denied their liability to pay compensation to the claimant. Though the owner of the bus admitted the fact of the accident, but denied that the accident occurred due to rash and negligent driving of the driver of the bus. On the other hand, it was pleaded that the deceased himself was negligent in crossing the road, which resulted in the unfortunate accident. The insurer, on the other hand, denied its liability to pay compensation to the claimant on the plea that the driver of the bus was not holding a valid driving licence and the bus was being plied in breach of the policy conditions.

4. The claimant examined herself as P.W.1 in support of her claim whereas the owner of the bus examined himself as D.W.1 and the insurer of the bus examined its investigator D.W.2 Mohan Singh Dangwal in support of its case.

5. The Tribunal, on the evidence led by the parties, held that the claimant's son deceased Kailash Chandra died on account of the injuries sustained by him in the motor accident on 22.08.2004; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle bus; and the insurer of the offending vehicle bus was liable to pay compensation to the claimant.

6. As the evidence led by the claimant about the income of the deceased was not found reliable by the Tribunal, the income of the deceased was assessed at Rs. 2000/- per month and Rs. 25,000/- per annum. By multiplying Rs. 25,000/- with the multiplier of '16' and after deducting 50% (half) of the said amount as the personal expenses of the deceased, the compensation was assessed at Rs. 2,00,000/-. The Tribunal awarded further sums of Rs. 2,000/- towards 'Funeral Expenses' and Rs. 2,000/- for 'Loss of the Estate'. Thus, a total sum of Rs. 2,04,000/- was awarded as compensation to the claimant for the death of her son in the motor accident. The Tribunal further directed payment of interest @ 6% per annum from the date of the claim petition.

7. Sri P.C. Bisht, the learned counsel for the appellant submitted that the Tribunal has erred in not accepting the claimant's evidence about the income of the deceased and in assessing his income at Rs. 2000/- per month and Rs. 25,000/- per annum only; in deducting 50% of the income of the deceased as his personal expenses and in awarding low compensation of Rs. 2,04,000/- only.

8. Sri Deepak Rawat, the learned counsel for second respondent – the Oriental Insurance Company Ltd., the insurer of the offending vehicle bus, on the other hand, supported the Award and submitted that the Tribunal has been quite liberal in awarding substantial compensation of Rs. 2,04,000/- to the claimant for the death of her son Kailash Chandra, aged about 18 years only. The learned counsel further submitted that the multiplier of '16' selected by the Tribunal is on the higher side in view of the dictum of the Apex Court in the Case of **Municipal Corporation of Greater Bombay Vs. Laxman Iyer and another** reported in **(2003) 8 SCC 731.**

9. The findings recorded by the Tribunal that the claimant's son Kailash Chandra died on account of the injuries sustained by him in the motor accident on 22.08.2004; the accident occurred due to rash and negligent driving of the driver of the bus; and the insurer of the bus was liable to pay compensation to the claimant, have now attained finality as the respondents have not filed any appeal against the Award.

10. True, claimant's son Kailash Chandra was aged about 18 years only on the date of the accident. Though the claimant pleaded that her son Kailash Chandra used to earn Rs. 4,500/- as tailor, but no cogent and reliable evidence was adduced before the Tribunal in support of the said plea. In this state of evidence, the Tribunal has rightly discarded the evidence led by the claimant about the income of the deceased. Nevertheless, the income of the deceased assessed by the

Tribunal at Rs. 2000/- per month and Rs. 25,000/- per annum deserves re-consideration as the same is on the lower side.

11. Even if the evidence led by the claimant about the income of the deceased was not reliable, the Tribunal could have assessed the income of the deceased on the basis of the notional income prescribed in the Second Schedule u/s 163-A of the Motor Vehicles Act. The notional income of Rs. 15,000/- per annum in the Second Schedule u/s 163 – A of the Motor Vehicles Act was prescribed in the year 1994. The accident in question took place in the year 2004. If the depreciation in the purchase value of Rupee during the period of these 10 years between 1994 to 2004 is taken into account, the notional income of Rs. 15,000/- prescribed in the year 1994 would come to about Rs. 36,000/- per annum in the year 2004. We, therefore, propose to re-compute the compensation taking the income of the deceased at Rs. 36,000/- per annum. By deducting one third of the income of the deceased as his personal expenses, the claimant's dependency is assessed at Rs. 24,000/- per annum.

12. The multiplier of '16' selected by the Tribunal is certainly on the higher side in view of the dictum of the Apex Court in the case of **Municipal Corporation of Greater Bombay Vs. Laxman Iyer and another** reported in **(2003) 8 SCC 731,** wherein it has been held that where the claimants are parents of the deceased, the multiplier should not be more than '10'. In our opinion, in the present case, too, the appropriate multiplier would be '10' only.

13. By multiplying the annual dependency of Rs. 24,000/- with the multiplier of '10', the compensation works out to Rs. 2,40,000/-. By adding the sum of Rs. 2000/- awarded by the Tribunal towards 'Funeral Expenses' and Rs 2000/- towards 'Loss of Estate', the claimant, in all, becomes entitled to receive a total sum of Rs. 2,44,000/- as compensation for the death of her son Kailash Chandra in the motor accident.

14. For the foregoing reasons, the appeal filed by the appellant U/s 173 of the Motor Vehicles Act for enhancement of the compensation is allowed in part. The compensation of Rs. 2,04,000/- awarded by the Tribunal is enhanced to Rs. 2,44,000/-(Two Lakh Fourty Four Thousand only).

15. The claimant is further entitled to receive interest on the enhanced amount of Rs. 40,000/-. With a view to avoid any delay in the computation of the amount of interest on the enhanced amount, we quantify the amount of interest at Rs. 5000/-. Second respondent – the Oriental Insurance Company is directed to pay Rs. 45,000/- (Rupees Fourty Five Thousand only) [enhanced amount of Rs. 40,000/- (Fourty Thousand only) and Rs. 5000/- (Five Thousand only) towards interest] to the claimant within a period of two months from today.

16. No order as to costs.

(Rajesh Tandon, J.) **(Rajeev Gupta, C. J.)**
21.09.2006 21.09.2006

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